WHOSE RIGHT IS IT ANYWAY?
SURFACE USE ISSUES IN OIL AND GAS DEVELOPMENT

By Matthew J. Siegel and David V. Bryce

In Texas, the surface and mineral estates can be severed and owned separately from each other.

Substances that belong to the **surface estate** include limestone, building stone, caliche, water, sand, gravel, surface shale, and near surface lignite, iron and coal. *Moser v. U. S. Steel Corp*, 676 S.W.2d 99 (Tex. 1984).

The severed mineral estate is the dominant estate over the surface, and the mineral owner is authorized to use as much of the surface as is reasonably necessary to produce and remove the minerals.

Surface Damages

Unless an oil and gas lease or other agreement provides otherwise, the surface owner is not entitled to reimbursement for surface damages unless the lessee's use of the surface is **unreasonable** or **negligent**. *Humble Oil & Refining Co. v. Williams*, 420 S.W.2d 133 (Tex. 1967). A person who seeks to recover from the lessee for damages to the surface has the burden of alleging and proving either specific acts of negligence or that more of the land was used by the lessee than was reasonably necessary. *Id.* at 134. Such determination is fact specific and made on a case-by-case basis. In *Williams*, there was no proof that lessee's construction and use of a road to access the well site was unreasonable; all the surface owner proved was that because of the road his land was worth $3,500 less. *Id.* at 135. The Texas Supreme Court stated, "The $3,500 figure does not relate to damages from an excessive, unnecessary, or unreasonable use of the property; it relates to the road itself which Humble had the right to build. *Id.*

There is no obligation on the part of lessee to restore the surface without a contractual agreement. *Warren Petroleum Corp. v. Monzingo*, 304 S.W.2d 362 (Tex. 1957). Any obligations on the part of the mineral owner are based on an agreement between the surface and mineral owners. In *Monzingo*, there was no evidence of negligence or using more of the surface than was reasonable; therefore, lessee was not liable for damage to the surface even though the lessee had failed to restore the surface, leaving slush pits unfilled and leaving behind ruts made by the moving of heavy equipment and a gravel road across the property to the drilling site.

The following are a few examples of when an oil and gas lessee has been found negligent in its use of the surface, and thus liable for surface damages:

1. *Texaco, Inc. v. Spires*, 435 S.W.2d 550, (Tex.Civ.App.—Eastland 1968, writ ref'd n.r.e.). In *Spires*, there was evidence that a cattle guard had been improperly constructed and that surface owner had made the lessee aware of this. Additionally, the lessee negligently failed to clean dirt and grass from the cattle guard, and the surface owner's horse, named Lekko, was attracted to the long

grass, got his leg caught in the cattle guard and broke it, making it necessary for the surface owner to destroy the horse. *Id.* at 551.

2. *General Crude Oil Co. v. Aiken*, 344 S.W.2d 668, 669 (Tex. 1961). Negligence when the lessee "constructed its salt water disposal pit upon a location uphill from and higher in elevation than a fresh water seep spring on plaintiff's premises and operated it in such a manner as to pollute the underground waters that fed the spring."

3. *Brown v. Lundell*, 344 S.W.2d 863 (Tex. 1961). Lessee liable for damage due to its negligent disposal of salt water which allowed the salt water to drain into the subsoil of the land and contaminate the underground water supply.

As to livestock that come within the drillsite, negligence or unreasonable use of the surface on the part of the lessee is also necessary to find liability for damages. Where oil had leaked out of the well and formed in pools on the surface near the well, and cows consumed the oil and died, the lessee was not liable where its negligence or unreasonable use of the surface were not found. "The mere fact that petitioner permitted oil to escape and form in small pools within 5 feet of the well, without any showing as to the manner in which the lease was being operated at the time, could not form the basis for a legal inference that such conduct constituted negligence." *Warren Petroleum Corp. v. Martin*, 271 S.W.2d 410, 412 (Tex. 1954). There was no showing that the equipment was defective or that the lessee operated in a negligent manner. The lessee also did not have a duty to fence and exclude livestock from the vicinity of the well; "therefore the lessee owed no duty to the lessor except to refrain from intentional or wanton injury to his livestock." *Brown v. Lundell*, 344 S.W.2d 863, 866 (Tex. 1961)(citing *Warren Petroleum*).

Additionally, in *Weaver v. Reed*,[1] there was evidence that lessee was negligent for leaving an open bucket of poisonous pipe lubricant near the well, where it could have been eaten by the surface owner's cattle. However, as in *Warren Petroleum*, above, it was a reasonable use of the premises and not negligent to leave pipe treated with lubricant stacked at the well site. It was unclear whether the cattle ate lubricant off of the stacked pipe or out of the open bucket. The lessee was not liable for damages because it could not be shown that leaving the bucket of lubricant open was the proximate cause of the death of the cattle.

Accommodation Doctrine

Although the mineral rights constitute the dominant estate, the holder of the mineral rights must exercise such rights with due regard for the rights of the owner of the servient (surface) estate. Texas courts have found that "where there is an existing use by the surface owner which would otherwise be precluded or impaired, and where under the established practices in the industry there are alternatives available to the lessee whereby the minerals can be recovered, the rules of reasonable usage of the surface may require the adoption of an alternative by the lessee." This is known as the **accommodation doctrine**.

[1] *Weaver v. Reed*, 303 S.W.2d 808 (Tex. Civ. App.—Eastland 1957, no writ).

Under the accommodation doctrine, the surface owner must show that (1) the mineral lessee has alternative methods of producing the minerals available to it; (2) the alternative methods available to mineral lessee are reasonable; and (3) the alternatives available to surface owner would be impractical and unreasonable under all the conditions.

The application of the accommodation doctrine is fact specific, with results being reached on a case-by-case basis.

The accommodation doctrine can always be trumped by the terms of a lease or surface agreement between the surface and mineral owners. Additionally, the accommodation doctrine will not apply to a surface owner that takes title subject to a prior reservation in the chain of title granting the mineral owner the right to "take all usual, necessary and convenient means" in producing minerals and to not be subject to liability for damages to the surface resulting from such means. *Landreth v. Melendez*, 948 S.W.2d 76, 81 (Tex. App.—Amarillo 1997, no writ). In *Landreth*, the surface owner wanted the mineral lessee to accommodate its irrigation system; however, because of the previous reservation, the mineral lessee had no obligation to accommodate the surface owner as long as it was using "all usual, necessary and convenient means" to develop the minerals. The surface owner was not able to prove that this was not the case.

The application of the accommodation doctrine is best demonstrated in the Texas Supreme Court case of *Getty Oil Co. v. Jones*.[2] In *Getty Oil*, the surface owner, Jones, used a self-propelled sprinkler irrigation system known as a "Valley System" to irrigate his farmland. The sprinklers hovered seven feet off the ground as they moved across the surface. Getty Oil then drilled two wells, installing pumping units (17 feet and 34 feet high) that interfered with the irrigation system. Evidence showed that there were reasonable alternatives for Getty Oil being used on adjacent land – placing pumping units in sunken concrete cellars to provide clearance and using shorter hydraulic pumping units. In the alternative, evidence showed that a labor shortage in the area made Jones' sprinkler system his only reasonable method for irrigating his land. Under circumstances such as these, the surface estate may be entitled to an accommodation from the dominant mineral estate.

The accommodation doctrine is not applicable if there are no *reasonable* alternatives available to the mineral owner. In *Haupt, Inc. v. Tarrant County Water Control*,[3] after the surface owner had flooded the surface, the mineral owner could not drill from a vertical platform on dry land. The mineral owner had alternatives available to it, such as directional drilling from offsite or drilling from a platform over water; however, evidence showed that these methods were not economical due to vastly increased costs and risks. Therefore, the mineral estate did not have to accommodate the surface estate and, as the flooding of the surface had already taken place, the surface owner was seen as having damaged the mineral estate.

[2] *Getty Oil Co. v. Jones*, 470 S.W.2d 618 (Tex. 1971).
[3] *Haupt, Inc. v. Tarrant County Water Control*, 870 S.W.2d 350 (Tex. App.—Waco 1994, no writ).

There is one example of a Texas court expanding the accommodation doctrine. In *Texas Genco, L.P. v. Valence Operating Co.*,[4] the court found that the mineral lessee must accommodate the surface owner based on the surface owner's *future plans* to use a proposed drilling site for a landfill, based on action surface owner had already done. In *Valence*, an existing use for purposes of the accommodation doctrine was found based on planning and preparatory steps the surface owner had taken. The court stated that:

> Although waste is not currently being disposed of in cell 20, cell 20 is indisputably a part of the deed-recorded and state-registered landfill. Clay has been mined from cell 20, and topsoil is being stored there. If a well were drilled there, Genco would have to redesign other cells and lose the use of others. *Id*. at 124.

Additionally, the alternative means available to the lessee (directional drilling from another well site) was found to be a "reasonable, industry-accepted alternative." *Id*. The accommodation doctrine was therefore applicable and the mineral owner had to accommodate the surface owner.

More recently, the Texas Supreme Court was faced with a case involving the accommodation doctrine. On June 21, 2013, the Texas Supreme Court issued its opinion in *Merriman v. XTO Energy, Inc*.,[5] marking the Supreme Court's first substantive engagement with the accommodation doctrine in nearly 20 years. The case involved a cattle operation conducted by Homer Merriman and the drilling of a well on Merriman's land by XTO Energy, Inc. ("XTO").

Merriman, a pharmacist by trade, owned 40 acres of land in Limestone County, Texas (the "Land"). In addition to working as a pharmacist, Merriman worked cattle. On the Land, Merriman built permanent fencing and corrals that he used in his cattle operation (the "Cattle Structures"). Merriman also built his home and a barn on the Land.

Merriman leased acreage adjacent to the Land for the purpose of grazing his cattle. Approximately once a year, he would bring his cattle to the Cattle Structures on the Land to sort and work the cattle.

XTO is the lessee of the mineral estate beneath the Land. In or around September 27, 2007, XTO approached Merriman and informed him that it intended to drill a well on the Land. Merriman objected, telling XTO that the proposed well site would prevent him from using the Land for his cattle operation. Merriman requested that XTO drill its well on the southwest portion of the Land, where it would not interfere with his cattle operation, but XTO declined Merriman's request.

When XTO began to construct the well site and drill the well, Merriman filed suit seeking temporary and permanent injunctions barring XTO from drilling the well. Once the well was drilled, Merriman amended his pleadings to seek a permanent injunction that required XTO to remove the well. In his lawsuit, Merriman contended that XTO did not accommodate his

[4] *Texas Genco, L.P. v. Valence Operating Co.*, 187 S.W.3d 118 (Tex. App.—Waco 2006, pet. denied).
[5] *Merriman v. XTO Energy, Inc.*, -- S.W.3d – (Tex. June 21, 2013).

existing use of the Land for his cattle operation and thus exceeded its rights in the mineral estate and trespassed on the Land.

Without stating its reasons, the trial court granted summary judgment in favor of XTO. Merriman appealed to the Waco Court of Appeals. The appellate court affirmed the trial court's granting of summary judgment in favor of XTO. In doing so, the appellate court's analysis relied heavily on assessing (1) whether Merriman produced evidence showing he could not use the Land for any other agricultural purpose besides his cattle operation, and (2) whether Merriman produced evidence that moving his cattle operation to the adjacent acreage he leased was not a reasonable alternative.

The Texas Supreme Court affirmed the judgment in favor of XTO, but disapproved of the Waco Court of Appeals' analysis of the accommodation doctrine. The Supreme Court began its analysis by restating the accommodation doctrine. Specifically, the Court noted that the mineral estate is dominant and the party possessing it has the right to go onto the surface of the land to extract minerals along with incidental rights that include using the surface as much as is reasonably necessary to extract and produce the minerals. In the event, however, that there are reasonable alternative uses of the surface available to the mineral owner, one that will prevent the surface owner from using the surface as intended and another that will allow such use, the mineral owner must use the alternative that allows the surface owner to continue to use the surface as intended. As stated by the *Merriman* Court,

> To obtain relief on a claim that the mineral lessee has failed to accommodate an existing use of the surface, the surface owner has the burden to prove that (1) the lessee's use completely precludes or substantially impairs the existing use, and (2) there is no reasonable alternative method available to the surface owner by which an existing use can be continued. If the surface owner carries the burden, he must further prove that given the particular circumstances, there are reasonable, customary, and industry-accepted methods available to the lessee which will allow recovery of the minerals and also allow the surface owner to continue the existing use.

Applying the standard it set forth, as quoted above, the Supreme Court concluded that the Waco Court of Appeals erred in two ways. First, the Waco Court of Appeals concluded that if Merriman could use the Land for an agricultural purpose other than his cattle operation, then XTO's drilling of the well did not preclude or substantially impair Merriman's existing use of the Land. Under this analysis, Merriman could not satisfy the first prong of the accommodation doctrine, and his claim thus failed. The Supreme Court disagreed and held that the "use" in question was solely Merriman's use of the Land for his cattle operation. According to the Supreme Court, the appropriate test was not whether Merriman could use the Land for any agricultural purpose, but whether Merriman had any "reasonable alternatives for conducting his cattle operation on [the Land]."

Second, the Supreme Court disagreed with the Waco Court of Appeals' analysis of the second prong a landowner must show to obtain accommodation of an existing use. According to

the Waco Court of Appeals, Merriman did not show that he could not have used the acreage he leased adjacent to the Land for his cattle operation; therefore the appellate court concluded that a reasonable alternative was available to Merriman and his claim failed. The Supreme Court held that the Waco Court of Appeals' focus on whether Merriman could use the leased acreage was incorrect. As stated by the Supreme Court, the question was whether Merriman had a reasonable alternative to conduct his cattle operation on the Land, not the adjacent acreage. In explaining its holding, the Court stated that requiring a surface owner to show that it could not conduct its existing use on land held by short term leases (i.e. the adjacent acreage) would "too greatly alter the balance between those who possess and have established a use of the surface estate and those who possess the mineral estate."

Despite disagreeing with the Waco Court of Appeals' analysis, the Supreme Court nevertheless affirmed the judgment in XTO's favor. It did so upon concluding that Merriman failed to produce competent summary judgment evidence showing that he could not continue to use the Land for his cattle operation even with the well present. Merriman's evidence, in other words, failed to show that he could not move the Cattle Structures to another portion of the Land and thus continue his cattle operation thereon. According to the Court, Merriman produced evidence only that he would be inconvenienced by the well, not that he had no reasonable alternative available to him to maintain the existing use.

In sum, the Supreme Court's disagreement with the analysis used by the Waco Court of Appeals, and resulting clarification of the appropriate standard, benefits landowners by narrowing what they must show to obtain an accommodation. Nevertheless, the requirement that a surface owner prove the absence of any reasonable alternative method to maintain an existing use remains a difficult standard to meet.

To further illustrate the issue of surface damages and the application of the accommodation doctrine, please see the following specific examples of surface uses: (1) use of groundwater and (2) locating drillsites and roads on the surface.

Groundwater

Water lying under the ground is part of the surface estate and the rights thereto belong to the surface estate owner. *Edwards Aquifer Authority v. Day*, 369 S.W.3d 814 (Tex. 2012). (Different from surface water which is owned by the State.) Similar to the "rule of capture" for oil and gas, the landowner owns all of the water captured and produced from his or her land.

A mineral lessee has an implied grant of reasonable use of the surface and the implied grant of reasonable use extends to and includes the right to use water from the *leased premises* in such amount as may be reasonably necessary to carry out the lessee's operations under the lease. *Sun Oil Co. v. Whitaker*, 483 S.W.2d 808 (Tex. 1972). This includes the right to drill water wells, as the drilling of wells necessitates the use of water. *Stradley v. Magnolia Petroleum Co.*, 155 S.W.2d 649 (Tex. Civ. App.—Amarillo 1941, writ ref'd). It is not necessary that lessee enter into a new agreement or give additional compensation to the surface owner for this right to drill water wells.

This right to use water can even be to the detriment of the surface owner. In *Sun Oil*, the surface owner wanted to prevent the mineral lessee from using its fresh water for waterflooding, alleging that the lessee's water use materially affected surface owner's supply of water for irrigation farming. Texas courts, however, have stated that waterflood projects are "reasonably necessary operations under oil and gas leases." 483 S.W2d at 811.

> As pointed out above, efforts to use available salt water for the waterflood project have failed, and there is no other source of usable water on the leased Whitaker tract which is available to Sun. To hold that Sun can be required to purchase water from other sources or owners of other tracts in the area, would be in derogation of the dominant estate. *Id.* at 812.

In the *Sun Oil* case, the lessee's use of the surface estate (including the water) was reasonable, and there was no negligence on the part of the lessee; therefore, the lessee was not liable for surface damages resulting from its use of the water. Additionally, the accommodation doctrine was not applicable because there were no alternatives available to the lessee on the leased premises. It was unreasonable to require that lessee seek water from other sources when there was water available to it from the leased premises; therefore, the surface owner's water use did not need to be accommodated.

A mineral lessee may also dispose of salt water into the surface owner's land, even against the surface owner's objections:

> The evidence conclusively establishes that the operator must dispose of the salt water (which is produced with the oil) in order to produce the oil and that there is no alternative method for disposing of the salt water on the leased premises covered by the oil and gas lease from the James Petroleum Trust. *TDC Engineering, Inc. v. Dunlap,* 686 S.W.2d 346 (Tex.Civ.App.—Eastland 1985, writ ref'd n.r.e.).

Making *Dunlap* more interesting is the fact that, due to a Pugh clause, the oil and gas lease which the mineral operator (TDC Engineering, Inc.) was acting under had expired as to a 40-acre tract containing the salt water injection well. The oil and gas lease had granted the operator the right to produce the mineral owner's minerals, and salt water disposal on the lands in which the minerals were owned was a necessary component of the operator's rights. Therefore, even though the lease had expired as to the land containing the salt water injection well, lessee's use of the disposal well could continue.

The mineral owner or lessee's right to use groundwater is subject to some limitations. For instance, a mineral owner cannot negligently or unnecessarily damage the surface or subsurface of the tract while using groundwater. *Getty Oil Co. v. Jones*, 470 S.W.2d 618, 621 (Tex. 1971).

Also, the lessee/operator may not use water in the production of oil or gas from lands not covered by the lease that the surface estate is subject to. *Robinson v. Robbins Petroleum Corp., Inc.*, 501 S.W.2d 865 (Tex. 1973). In *Robinson*, the mineral operator was using salt water from

the surface owner's 80- acre tract for a waterflood recovery project throughout an approximately two thousand acre unit, without the surface owner's consent and without compensation for benefits flowing to premises not covered by or authorized to be pooled by the lease burdening his tract. The court stated that:

> Robinson, as owner of the surface, is entitled to protection from uses thereof, without his consent, for the benefit of owners outside of and beyond premises and terms of the Wagoner lease. Likewise, the rights of the mineral owners are entitled to be protected in their use of the salt water which was reasonably necessary to produce oil under the premises and terms described in the Wagoner lease. We hold that Robinson is entitled to recover the value of that portion of the salt water which has been consumed for the production of oil for owners of lands outside the Wagoner lease. *Id*. at 868.

A different result than the one reached in *Robinson* is found, however, if the surface rights were properly subject to unitization. In *Miller v. Crown Central Petroleum Corporation*,[6] the court said that the right of the mineral lessee "includes the right to use as much of the surface estate as is reasonably necessary to produce oil or gas from a well *located on a production unit* with which the tract has been unitized" (emphasis added). The court in *Miller* ruled that a pipeline can be built across the surface tract and salt water from outside of the surface tract can be transported across the surface tract if it is reasonably necessary for oil production from the unit.

Location of Drillsites and Roads

It is generally recognized in Texas that the mineral lessee may select any portion of the surface estate covered under the oil and gas lease as a place for his well, subject to whatever restrictions there may be in the lease itself. *Gulf Oil Corporation v. Marathon Oil Co.*, 152 S.W.2d 711, 724 (Tex. 1941). Additionally, so long as it is not an unreasonable use of the property, a mineral owner can locate and build roads at its discretion. *Gulf Oil Corp. v. Walton*, 317 S.W.2d 260 (Tex. Civ. App.—El Paso 1958, no writ).

In *Otis v. Haas*,[7] the surface owner objected to the lessee locating a tank battery approximately 400 feet from surface owner's house. The surface owner showed that the tank battery could be relocated at minimal cost and with minimal interference to lessee's operations. The court stated, however, that inconvenience of the surface owner is not a reason to apply the accommodation doctrine. The surface owner did not show that the location of the tank battery interfered with its existing surface use (grazing) in any way.

A surface owner cannot unreasonably interfere with or restrict the mineral owner's ability to access the surface for oil and gas production. *Davis v. Devon Energy Production Co., L.P.*, 136 S.W.3d 419 (Tex. App.—Amarillo 2004, no pet.). In *Davis*, the court found that it was

[6] *Miller v. Crown Central Petroleum Corporation*, 309 S.W.2d 876 at 878 (Tex. Civ. App.—Eastland 1958, writ dism'd by agr.).
[7] *Otis v. Haas*, 569 S.W.2d 508 (Tex. Civ. App.—Corpus Christi 1979, writ ref'd n.r.e.).

reasonable for the mineral owner to use caliche to build an all-weather road across the surface to access its well and tank batteries. Based on the facts of the case, the court said:

> We are cited to no evidence indicating that construction of permanent caliche roads would destroy [surface owners'] ability to conduct a profitable farming operation. And, though there exists some evidence suggesting that caliche may cause them problems, the trial court could have reasonably concluded, from the record before it, that any impairment had an insubstantial impact on the farming operations. *Id.* at 425.

A mere inconvenience to the surface owner is permissible. The surface's agricultural use would have to be destroyed or substantially impaired for the accommodation doctrine to apply.

One way surface owners can dictate where mineral owners conduct their operations, other than through leases and other agreements, is by applying to the Texas Railroad Commission for a qualified subdivision under Chapter 92 of the Texas Natural Resources Code. Qualified subdivisions allow the surface owner to designate two-acre operation sites for every 80 acres in the subdivision, and the mineral lessee/operator may only conduct surface operations from these two-acre sites. The availability of the qualified subdivision designation is limited to those counties with a population of 400,000 or counties with a population of 150,000 bordering a county with a population of 400,000. The designation is, therefore, only available to surface owners in the areas around Houston, Dallas, Fort Worth, Austin, San Antonio, El Paso, and the Rio Grande Valley.

Negotiating with Surface Owners

As you can see, Texas law, in general, is pretty favorable toward a mineral owner, lessee, or operator with regard to surface use (including groundwater). The mineral estate is the dominant estate and oil and gas operations will usually be protected. The burden is on the surface owner to prove the elements of the accommodation doctrine in order to prevent or alter a mineral owner's action. Additionally, short of a finding of negligence or unreasonable use of the surface, a mineral owner, lessee, or operator will not be liable for surface damages.

The relationship between the surface and mineral owner can be altered, however, by the provisions of an oil and gas lease or surface agreement. With a mineral lessee/operator usually holding a more favorable position, why would a lessee/operator want to enter into agreements containing surface provisions and restrictions less favorable than the general law? One main reason is to avoid what could be costly litigation, even if the lessee/operator is triumphant in the end. Additionally, surface owners often live on the property that the mineral owner requires access to. Both sides hope to enter into a long and productive working relationship, so it is best to keep the landowner happy. Furthermore, as litigation can be uncertain, it is helpful to define the rights of each party, in order to avoid any confusion.

In my experience, landowners are becoming more sophisticated and I am seeing more detailed and comprehensive surface provisions in oil and gas leases and surface use agreements.

As you can see above, groundwater is part of the surface state, yet the law tends to defer to the mineral owner in many instances when it comes to use of groundwater. Courts have stated that water use is a reasonable and necessary part of mineral development. Some surface owners today prohibit the drilling of water wells, the use of fresh water for secondary recovery operations, or the ability to dispose of salt water on the premises. Such prohibitions are serious concessions on the part of a mineral lessee, and if you allow these provisions in your lease or surface use agreement, make sure you have an alternative source of water or way to dispose of salt water set up. Additionally, a lease or agreement with such restrictions should include a statement that the mineral lessee/operator is allowed to obtain water from other sources and may use such water on the leased premises.

Many surface owners want to be able to consent to the location of road, pipelines, flow lines, tank batteries. Make sure that such provisions state that surface owner's consent cannot be unreasonably withheld. Also, with regards to roads, I have seen surface owners require that roads be built a certain way, specific materials be used, and a 20 mph speed limit be enforced on the leased premises (10 mph in the vicinity of deer pens). These provisions narrow the protection that the law general gives to the mineral owner/lessee/operator. These examples may all be things that are easy for you to give to the surface owner in negotiations. These may come in handy when you need to give up something.

Surface owners today are including damage provisions where the mineral lessee/operator is required to pay a set amount upfront for certain damages (for instance, $5,000 per well location; $10.00 per rod for a single-lane road). Many times a surface owner may state that such list is not exhaustive of all damages. You should try to get as much specificity as you can into these agreements so you are not leaving yourself open to additional damages later on.

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Articles Authored...

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In addition to his litigation practice, David assists clients in various corporate matters, including regulatory compliance, where his experience includes advising clients on regulatory matters relating to oil and gas operations in the Gulf of Mexico and advising clients on environmental liability issues. David also has experience with eminent domain issues arising from the construction of common-carrier pipelines.

Published Works & Presentations:

- *Pipeline Gathering in an Unbundled World: How FERC's Response to Spin Down Threatens Competition in the Natural Gas Industry* (Minnesota Law Review, Vol. 89)
- *Pitfalls to be Avoided in Drafting: Select Issues under Texas Law and Louisiana Law*, 59th Annual Institute on Mineral Law, Paul M. Hebert Law Center, Louisiana State University, 2012

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Clarification Act